

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

COMMONWEALTH OF VIRGINIA,)	Civil Action No. 3:10cv188
EX REL. KENNETH T. CUCCINELLI, II,)	
in his official capacity as Attorney General of Virginia,)	
)	
Plaintiff,)	
)	
v.)	
)	
KATHLEEN SEBELIUS, Secretary of the Department of)	
Health and Human Services, in her official capacity,)	
)	
Defendant.)	

**NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE
AMICUS BRIEF OF AMERICANS FOR FREE CHOICE IN MEDICINE
AND PACIFIC LEGAL FOUNDATION**

ROBERT LUTHER III, VSB No. 78766
Counsel of Record
Knically & Associates, P.C.
487 McLaws Circle, Suite 2
Williamsburg, Virginia 23185
Telephone: (757) 253-0026
Facsimile: (757) 253-5825
E-mail: RL@knicallylaw.com

TIMOTHY SANDEFUR, California Bar No. 224436
Pro hac vice pending
E-mail: tms@pacificlegal.org
LUKE WAKE, California Bar No. 264647
Pro hac vice pending
E-mail: lw@pacificlegal.org
Pacific Legal Foundation
3900 Lennane Drive, Suite 200
Sacramento, California 95834
Telephone: (916) 419-7111
Facsimile: (916) 419-7747

Attorneys for *Amici* Americans for Free Choice in Medicine and Pacific Legal Foundation

October 4, 2010

NOTICE OF MOTION AND MOTION

NOTICE IS HEREBY GIVEN that on October 4, 2010, in the United States District Court for the Eastern District of Virginia, Richmond Division, Amici Americans for Free Choice in Medicine (AFCM) and Pacific Legal Foundation (PLF) hereby move to file an amicus curiae brief in support of Plaintiff the Commonwealth of Virginia in *Virginia ex rel. Cuccinelli v. Sebelius* (No. 3:10CV188-HEH). The Commonwealth alleges that the Patient Protection and Affordable Care Act (Act) violates multiple provisions of the U.S. Constitution. Amici respectfully submit the attached brief in support of Plaintiff's motion for summary judgment to offer the Court guidance in evaluating the constitutionality of the Act's Individual Mandate provision, which purports to compel Virginia citizens to buy federally approved health insurance.

CORPORATE & FINANCIAL DISCLOSURE STATEMENTS

Pursuant to Local Rule 7.1 of the Eastern District of Virginia, the undersigned counsel for AFCM and PLF in the above-captioned action certify that there are no parents, trusts, subsidiaries, and/or affiliates of AFCM or PLF that have issued shares or debt securities to the public.

IDENTITY AND INTEREST OF AMICI

AFCM is a national nonprofit, nonpartisan, educational organization based in Newport Beach, California, which was founded in 1993 to promote the philosophy of individual rights, personal responsibility, and free-market economics in the health care industry. AFCM advocates a full, free market health care system by promoting health saving accounts and tax equity for individuals. AFCM also sponsors educational programs, lectures, and town hall meetings for the public on these issues. AFCM members include patients, Medicare recipients, physicians, nurses,

health care professionals, insurance industry professionals, pharmacists, pharmaceutical industry professionals, financial services professionals, businesspeople, employee benefits professionals, and hospital staff.

Amicus PLF is widely recognized as the largest and most experienced nonprofit legal foundation of its kind. Since 1973, PLF has litigated matters affecting the public interest at all levels of state and federal courts. Representing the views of thousands of supporters nationwide, PLF advocates for limited government, individual rights, and free enterprise. One of PLF's special areas of focus has been litigation to enforce the constitutional restraints on federal power established under the Commerce Clause. PLF has participated in numerous cases addressing the Commerce Clause and the balance of power between the states and federal government, including *Gonzales v. Raich*, 545 U.S. 1 (2005); *Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers*, 531 U.S. 159 (2001); *Jones v. United States*, 529 U.S. 848 (2000); *United States v. Morrison*, 529 U.S. 598 (2000); and *United States v. Lopez*, 514 U.S. 549 (1995).

MEMORANDUM OF POINTS AND AUTHORITIES

This case raises important issues of constitutional interpretation that will affect individual citizens and governments throughout the nation. Amici AFCM and PLF file this brief to assist the Court in evaluating the constitutionality of the Act, and specifically to emphasize that Congress exceeded the scope of its authority under the Commerce Clause and the federal taxing power in requiring individuals to buy health insurance. Ruling in favor of Defendant would set a troubling precedent, allowing the federal government to breach the limits of its constitutional authority in other areas of public policy as well.

This Court has broad discretion to permit a nonparty's participation in a lawsuit as amicus curiae. *See Nat'l Assoc. of Homebuilders v. U.S. Army Corps of Engineers*, 519 F. Supp. 2d 89, 93 (D.D.C. 2007) (finding court would benefit from environmental organization's participation as amicus in support of government's interpretation of Clean Water Act). An amicus brief should normally be allowed when the amicus has unique information or perspective that can help the court. *Jin v. Ministry of State Security*, 557 F. Supp. 2d 131, 137 (D.D.C. 2008). An amicus brief is appropriate when it serves "the benefit of the court, assisting the court in cases of general public interest." *Newark Branch, N.A.A.C.P. v. Twp. of Harrison*, 940 F.2d 792, 808 (3d Cir. 1991); *see also Peters v. Jenney*, 327 F.3d 307, 319 n. 13 (4th Cir. 2003) (noting amicus brief was "helpful to the court."); *Bradley v. Sch. Bd. of City of Richmond*, 317 F. Supp. 555, 576 (E.D. Va. 1970) (same). And amicus participation ensures "a complete and plenary presentation of difficult issues so that the court may reach a proper decision." *Newark Branch, N.A.A.C.P.*, 940 F.2d at 808.

Moreover, granting the motion for leave to file the accompanying amicus brief will not prejudice any party. Pursuant to the Court's August 10, 2010, Consent Order, amicus filings will be accepted until and including October 4, 2010. AFCM and PLF have met the Court's deadline, which gives Defendant sufficient time to respond. Additionally, the Court has allowed several amicus briefs in this case without prejudicing any party.

AFCM and PLF believe that their respective public policy perspectives and experience in the field of health care and constitutional law will provide additional information for the benefit of the Court. AFCM specializes in advocating for free-market health care policy, and PLF has a wealth of experience litigating fundamental issues of constitutional law, including the scope of Congress's

powers under the Commerce Clause. Amici have a thorough understanding of the issues and the underlying law of this case, and will provide a useful analysis to the Court.

CONCLUSION

For the foregoing reasons, Amici AFCM and PLF respectfully submit that the motion for leave to file a brief amicus curiae should be granted.

DATED: October 4, 2010.

Respectfully submitted,

ROBERT LUTHER III
TIMOTHY SANDEFUR
LUKE WAKE

By /s/ Robert Luther III
ROBERT LUTHER III
Counsel of Record
Knically & Associates, P.C.
487 McLaws Circle, Suite 2
Williamsburg, Virginia 23185
Telephone: (757) 253-0026
Facsimile: (757) 253-5825
E-mail: RL@knicallylaw.com

Timothy Sandefur, Cal. Bar No. 224436*
Luke A. Wake, Cal. Bar No. 264647*
Applications for Pro Hac Vice Pending

Attorneys for *Amici* Americans for Free
Choice in Medicine and Pacific Legal Foundation

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of October, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

Earle Duncan Getchell, Jr.
Charles E. James, Jr.
Stephen R. McCullough
Wesley Glenn Russell, Jr.
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219

Jonathan H. Hambrick
Assistant United States Attorney
Office of the United States Attorney
600 East Main Street, Suite 1800
Richmond, Virginia 23219

Jennifer Ricketts Rivera
Sheila M. Lieber
Joel McElvain
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW, Room 7332
Washington, DC 20001

A copy has been served by first-class, postage-prepaid, United States Mail to Ray Elbert Parker, *Pro Se*, P.O. Box 320636, Alexandria, Virginia 22320.

/s/ Robert Luther III
ROBERT LUTHER III
Counsel of Record
Knically & Associates, P.C.
487 McLaws Circle, Suite 2
Williamsburg, Virginia 23185
Telephone: (757) 253-0026
Facsimile: (757) 253-5825

E-mail: RL@kniceylaw.com